IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 02-14282 CA 25

DELMY SAFIE, individually
and as Personal Representative
of the ESTATE OF ALEJANDRO
T. SAFIE,

Plaintiff(s),

vs.

CARLOS SAFIE and EXECUTIVE
BANKING CORPORATION, a
Florida corporation,

Defendant(s).

ORDER ON DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

THIS CAUSE having come on to be heard on Defendant's Motion for Summary Judgment and the Court having heard argument of counsel, and being otherwise advised in the premises, it is hereupon

ORDERED AND ADJUDGED that said Motion be, and the same is hereby **GRANTED.**

1. On August 18, 1981 Alejandro T. Safie created a revocable trust which holds the preferred shares of Executive Banking Commission ("EBC").

2. The terms of this revocable trust spells out specifically how this trust may be revoked. Specially, paragraph 10 states in pertinent part that:

> 10. The Grantor reserves the power at any time or from time to time during the time of his life to alter, amend or revoke in whole or in part the terms and provisions of the declaration of Trust and the Trusts hereby created, by an instrument in writing, mailed or delivered to the Trustee. In the event that the Grantor shall revoke this Trust, the Trustee shall pay over and transfer the Trust estate, including any accumulated income, or the portion thereof to which said revocation is applicable, to the Grantor or as the Grantor may direct in writing.
>
> Upon the death of the Grantor, this Declaration of Trust and the Trust hereby created shall be irrevocable.

3. At no time did Alejandro T. Safie act in accordance with the provisions of paragraph 10 in an effort to revoke this trust. He never revoked said trust in writing nor did he ever transfer the trust's assets to himself or to his designee.

4. Plaintiff's argue that Mr. Safie revoked this trust by a 1999 will and or by a will of 2001. They assert that even if he did not do so expressly, this was certainly his testamentary intent.

5. However, neither the 1999 will nor the 2001 will or both read together, demonstrate revocation of this trust.

Although the 1999 will proposes to devise the trust shares, it simply could not since these shares were pledged as collateral to City National Bank based upon a prior loan agreement.[1]

6. At the time of execution of the 2001 will, the obligation under the City National Bank loan had been satisfied.

7. Although Mr. Safie placed the stock certificates in a sealed envelope and invited his wife Delmy to deposit said envelope in a safety deposit box, the court finds that this, in and of itself, cannot constitute a revocation of the trust within its terms.

8. It should be noted that the stock certificates were never signed by Mr. Safie, and on occasions subsequent to the execution of the will he continued to vote at stock holder meetings as the owner of the shares of stock.

9. Under Florida law, if the method for the exercise of revocation is set forth in the trust agreement, then the power must be exercised in strict conformity to its terms. **Euart vs. Yoakley,** 456 So.2d 1327, 1328 (Fla.4th DCA 1984). Here, to be sure, there was no renunciation within the terms of this trust.

11. Therefore, since there is no genuine issue of material fact, summary judgment must be granted for the Defendants.

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[1] On September 11, 1998 Alejandro T. Safie in his capacity as Trustee pledged the trust shares to city National Bank as security for a $1.5 million dollar loan pursuant to a stock pledge and security agreement.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 1st day of May, 2003.

/s/_____
MICHAEL B. CHAVIES
Circuit Court Judge

cc:
Norman J. Benford, Esq.
R. Lawrence Bonner, Esq.
Bruce Jacobs, Esq.
Paul M. Kade, Esq.
William Jay Palmer, Esq.
Neale J. Poller, Esq.

IN THE CIRCUIT COURT OF THE
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CASE NO.: 02-14282 CA 25

DELMY SAFIE, individually
and as Personal Representative
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T. SAFIE,

Plaintiff(s),

vs.

CARLOS SAFIE and EXECUTIVE
BANKING CORPORATION, a
Florida corporation,

Defendant(s).

ORDER GRANTING DEFENDANTS' AMENDED MOTION TO CORRECT CLERICAL MISTAKES IN THE ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on Defendants Carlos Safie and Executive Banking Corporation's Amended Motion to Correct Clerical Mistakes in this Court's Order granting Defendants' motion for summary judgment ("Summary Judgment Order"). Having reviewed the file, and being fully advised in the premises, it is hereby

ORDERED and ADJUDGED that Defendants' motion is granted and that paragraph 8 of the Court's Summary Judgment Order is replaced with the following: **It should be noted that Mr. Safie never endorsed and transferred the stock certificates to himself or to a**

designee, and on occasions subsequent to the execution of the will he continued to vote at EBC shareholder meetings as the Trustee of the Revocable Trust rather than as an individual owner.

In all other respects the Court's Summary Judgment Order stands as written.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 6th day of June, 2003.

/s/_____
MICHAEL B. CHAVIES
Circuit Court Judge

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 02-14282 CA 25

DELMY SAFIE (Personal Representative)

Plaintiffs,

vs.

CARLOS SAFIE

Defendants.
_____/

PLAINTIFF'S MOTION FOR REHEARING OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on April 30th, 2003 pursuant to Plaintiff's Motion for Rehearing of Defendant's Motion for Summary Judgment And Plaintiff's Cross-motion for Summary Judgment. The Court, after reviewing the record, having heard argument of counsel, having read the memoranda of law, and being otherwise fully advised, finds as follows:

1. On May 1st, 2003 this Court granted Summary Judgment for the Defendants on the basis that no genuine issue of material fact remained given the following:

   a. Mr. Alejandro T. Safie never revoked the trust in writing nor did he transfer the trust's assets to himself or to his designee.

b. Mr. Alejandro T. Safie's subsequent wills did not revoke the trust.

c. Mr. Alejandro T. Safie's act of placing his stock certificates in a sealed envelope and inviting his wife to deposit said envelope in a safety deposit box did not constitute a revocation of the trust.

d. Mr. Alejandro T. Safie did not act in conformity with the strict terms required for revoking the trust. The trust was not revoked.

2. Subsequent thereto, this Court heard argument in furtherance of Plaintiff's Motion for Rehearing.

a. Much of Plaintiff's argument was based upon the position that this Court erred in:

1. Its interpretation of Euart v. Yoakley, 456 So.2d, 1327 (Fla. 4th DCA 1984).

2. Misapplication of the summary judgment standard.

3. Defendants argued therefore, entitlement to a rehearing based upon the above.

4. This Court has exhaustively reviewed all of the motions, memoranda and transcripts filed in this case and based upon the foregoing makes the following determinations:

a. Under the Euart test, Alejandro T. Safie did not act in conformity with the strict terms required to revoke the trust.

b. With regard to the summary judgment standard, this Court finds that there is no genuine issue of material fact remaining in this cause, and thus would deny the Motion for Rehearing on that basis.

5. Rehearings are granted if the trial court overlooked matters when rendering its original decision. It is not a forum for re-arguing the issues. Diamond Cab. Co. of Miami v. King, 146 So. 2d 889, 891 (Fla. 1962).

6. This Court finds that it did not overlook matters when rendering its original decision nor did it predicate its order on incorrect legal arguments.

7. The Court remains firm in its decision that no genuine issue of material fact remains.

As such, Plaintiff's Motion for Rehearing of Defendant's Motion for Summary Judgment is DENIED.

Furthermore Plaintiff's Cross-motion For Summary Judgment is DENIED.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 10 day of July2003.

/s/_____

MICHAEL B. CHAVIES
Circuit Court Judge

CC: All Counsel

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF
APPEAL OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D., 2004

DELMY SAFIE, individually and as Personal Representative of the ESTATE OF ALEJANDRO T. SAFIE,

Appellant,

vs.

CARLOS SAFIE, and EXECUTIVE BANKING CORPORATION, a Florida corporation,

Appellees.

** CASE NO. 3D03-2226

Opinion filed March 17, 2004.

An Appeal from the Circuit Court for Miami-Dade County, Michael B. Chavies, Judge.

Camner, Lipsitz and Poller, and Neale J. Poller, and Bruce Jacobs; Kenny Nachwalter, and Scott E. Perwin, for appellant.

Shutts & Bowen, and William Jay Palmer, and Peter V. Fullerton, for appellee, Executive Banking Corporation.
Homer & Bonner and R. Lawrence Bonner for appellee, Carlos Safie.

Before GERSTEN, FLETCHER, and SHEPHERD, JJ.

PER CURIAM.

Affirmed. See Euart v. Yoakley, 456 So. 2d 1327 (Fla. 4th DCA 1984); MacFarlane v. First Nat'l Bank of Miami, 203 So. 2d 57 (Fla. 3d DCA 1967).

M A N D A T E
DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

DCA # 3D03-2226

DELMY SAFIE, ETC.,
ET AL.,
v.
CARLOS SAFIE, ET AL.,

This cause having been brought to this Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause in accordance with the opinion of this Court attached hereto and incorporated as part of this order, and with the rules of procedure and laws of the State of Florida.

Case No. 02-14282

WITNESS, The Honorable ALAN R. SCHWARTZ, Chief Judge of said

District Court and seal of said Court at Miami, this day October 8, 2004.

Seal of the Third District
Court of Appeal, State
Of Florida

/s/ Mary Cay Blanks
Clerk, District Court of Appeal,
Third District

CC W/O OPINION: Neale J. Poller and Bruce Jacobs; Kenny Nachwalter; Scott E. Perwin; William Jay Palmer and Peter V. Fullerton and R. Lawrence Bonner and Eric A. Hernandez

SUPREME COURT OF FLORIDA

THURSDAY, JANUARY 6, 2005

CASE NO.: SC04-2074

DELMY SAFIE, ETC. vs. CARLOS SAFIE, ET AL.

Petitioner(s) Respondent(s)

Having determined that this Court is without jurisdiction, this case is hereby dismissed. See Persaud v. State, 838 So. 2d 529 (Fla. 2003).

No motion for rehearing will be entertained by the Court.

A True Copy
Test:

/s/_____
Thomas D. Hall
Clerk, Supreme Court

Seal of the Supreme Court of the State of Florida

mc
Served:

BRUCE JACOBS
NEALE J. POLLER
R. LAWRENCE BONNER
CHRISTOPHER JOHN KING
PETER VAN DORN FULLERTON
WIILLIAM JAY PALMER